

JURY TRIAL, RIGHT TO — No right to jury trial when prosecution uses discretion to file class 6 felony offense as class 1 misdemeanor — Revised 11/2009

A person is constitutionally entitled to a jury trial under the Sixth Amendment of the United States Constitution and Article 2, Sections 23 and 24 of the Arizona Constitution. U.S. Const. amend. VI; Ariz. Const. art. 2, §§ 23-24. Arizona's Constitution states that the right to a jury trial is inviolate. Ariz. Const. art. 2, § 23. This requires that the state guarantee the right to a jury trial when someone is accused of an offense for which a jury trial was granted prior to statehood or when the "modern offense contains elements comparable to those found in the common law offense." *State v. Derendal*, 209 Ariz. 416, 419, 104 P.3d 147, 150 (2005) (citation omitted). The current offense need not be exactly the same as the common law offense, but it must be of the "'same character' as the common law crime." *Crowell v. Jejna*, 215 Ariz. 534, 540, 161 P.3d 577, 583 (App. 2007).

If the court finds no common law antecedent for the charged offense, the court must then analyze the seriousness of the offense pursuant to Article 2, Section 24. *Derendal*, 209 Ariz. at 425, 104 P.3d at 156. That section states, in pertinent part, "the accused shall have the right to . . . a speedy public trial by an impartial jury of the county[.]" Ariz. Const. art. 2, § 24. In *Blanton v. City of North Las Vegas*, 489 U.S. 538, 543 (1989), the United States Supreme Court held that criminal offenses for which the maximum penalty is less than six months incarceration are presumptively considered petty offenses and therefore, the Sixth Amendment right to a jury trial does not attach. Arizona follows *Blanton*; "when the legislature classifies an offense as a misdemeanor and punishable by no more than six months incarceration, we will presume that offense

to be a petty offense that falls outside the jury requirement of Article 2, Section 24 of the Arizona Constitution.” *Derendal*, 209 Ariz. at 422, 104 P.3d at 154.

The defendant may rebut that presumption by demonstrating that the offense carries “additional severe, direct, uniformly applied, statutory consequences that reflect the legislature’s judgment that the offense is serious.” *Buccellato v. Morgan*, 220 Ariz. 120, 124, 203 P.3d 1180, 1184 (App. 2008) (citations omitted). To establish sufficient seriousness, the defendant must show that the penalty arose directly from Arizona statutory law, that the consequences are severe, and that those consequences will apply uniformly to all persons convicted of a particular offense. *Derendal*, 209 Ariz. at 422-23, 104 P.3d at 153-54. Furthermore, when the State has the legislatively granted authority to classify an offense as either a Class 1 misdemeanor or a Class 6 felony, the initial possibility of the offense being charged as a felony does not trigger the right to a jury trial. *Amancio v. Forester*, 196 Ariz. 95, 98, 993 P.2d 1059, 1062 (App. 1999).

In *Amancio*, the defendant was arrested for unlawful imprisonment, a class six felony, but the city prosecutor designated the offense as a class 1 misdemeanor, which would not entitle him to a jury trial. The defendant filed a special action arguing that he was entitled to a jury trial because the offense had been classified as a felony by the legislature. Ariz. Rev. Stat. § 13-1303(A). The State argued that the city prosecutor's office lawfully filed the offense as a misdemeanor, it was filed in a court of limited jurisdiction, and that the “maximum penalty for a class 1 misdemeanor does not require a jury trial under federal law.” *Amancio*, 196 Ariz. at 96, 993 P.2d at 1060. The Court of Appeals agreed that the defendant was not entitled to a jury trial, because the “mere classification of an offense as a felony does not necessarily mandate a jury trial when

the legislature has also granted the prosecutor the discretion to charge the offense as a misdemeanor and thus, long before trial, reduce the defendant's potential punishment." *Id.* at 98, 993 P.2d at 1062. The Court reasoned that the State "exercised its legislatively granted discretion to charge the offense as a misdemeanor. . . . [Therefore,] the mere initial classification of this offense as a class 6 felony does not make the offense jury-eligible." *Id.*